STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW BRYANT,

Defendant-Appellant.

UNPUBLISHED
September 14, 2006

No. 260768
Wayne Circuit Court
LC No. 04-008886-01

Before: Davis, P.J., and Murphy and Schuette, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree premeditated murder, MCL 750.316(1)(a), first-degree felony murder, MCL 750.316(1)(b), kidnapping, MCL 750.349, two counts of assault with the intent to do great bodily harm less than murder, MCL 750.84, and first-degree criminal sexual conduct, MCL 750.520b(1)(f). He was sentenced as a fourth habitual offender, MCL 769.12, to life in prison for his first-degree premeditated murder conviction, 50 to 75 years in prison for his kidnapping conviction, six to ten years in prison on each of his assault with the intent to do great bodily harm less than murder convictions, and 50 to 75 years in prison for his first-degree criminal sexual conduct conviction. His first-degree felony murder conviction was set aside and dismissed at sentencing. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred in denying his peremptory challenges against two prospective jurors. We disagree.

A party may exercise up to 20 peremptory challenges if being charged for an offense that is punishable by death or life in prison. MCL 768.13; MCR 6.412 (E)(1). However, a party may not exercise a peremptory challenge to remove potential jurors solely on the basis of gender, ethnic origin, or race. *People v Bell*, 473 Mich 275, 282; 702 NW2d 128 (2005). The party opposing the peremptory challenge must make a prima facie showing of discrimination by establishing that the peremptory challenges are being exercised to exclude members of a certain racial group from the jury pool and the circumstances raise an inference that the exclusion was based on race. *Id*., 282-283. The proponent must then rebut the prima facie case with a race-neutral explanation for the challenge that is "more than a general assertion" and is "related to the particular case being tried." *Id*., 283. The trial court must then determine whether the proffered explanation is credible by looking at all relevant circumstances, including the parties' demeanors, whether the explanation has any accepted trial strategy, and the explanation's reasonableness. *Id*. As a mixed question of law and fact, we review de novo questions of law

and whether a race-neutral explanation has been offered, and we review for clear error the trial court's factual findings, including whether a prima facie case of discrimination has been presented and whether the neutral explanation is pretextual. *People v Knight*, 473 Mich 324, 342-345; 701 NW2d 715 (2005).

At the end of the second day of jury selection, defendant peremptorily challenged three prospective jurors, and the trial court sua sponte denied the challenges, observing that all defendant's challenges had been used to strike white jurors. The trial court eventually permitted one of those challenges and held argument on the issue. Defense counsel argued that one challenges was based on the juror's "slouching" body language and defendant's perception that the juror had a problem with the "beyond a reasonable doubt" standard; his other challenge was based on the juror having "an evil look in her eye." The trial court found these reasons pretextual and noted that other unchallenged jurors had the same questions regarding reasonable doubt. The record shows that defendant's peremptory challenges were only used to exclude Caucasians from the jury pool, establishing an inference of discrimination. Furthermore, defendant never sought to strike African-American jurors who had expressed similar problems with the reasonable doubt standard. Although body language may communicate a great deal of information that a prudent attorney should be sensitive to, the record reflects only that defendant's proffered reason for objecting to the jurors' body language was that he found the challenged jurors' body language personally offensive or distasteful. We cannot find any basis for such an objection in accepted trial strategy, and given the trial court's superior opportunity to view defendant's own demeanor when providing his explanations, we see no clear error in the trial court's denial of defendant's peremptory challenges.

Defendant next argues that he was denied his constitutional rights to be present at his trial and to confront his accusers when the trial judge removed him from the court. We disagree.

A defendant charged with a felony must be physically present in the courtroom during his or her trial. MCL 768.3; *People v Krueger*, 466 Mich 50, 53-54; 643 NW2d 223 (2002). However, this is not an absolute right. *Id.*, 54. A defendant may be removed, after a warning, if he persists in "conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom." *Illinois v Allen*, 397 US 337, 343; 90 S Ct 1057; 25 L Ed 2d 353 (1970); *People v Staffney*, 187 Mich App 660, 664; 468 NW2d 238 (1990). Furthermore, he can waive the right if he knows of it and intentionally decides to abandon its protection. *People v Williams*, 196 Mich App 404, 407; 493 NW2d 277 (1992). We review a trial court's decision to remove a defendant from the courtroom during his trial for an abuse of discretion. *People v Harris*, 80 Mich App 228, 229-230; 263 NW2d 40 (1977).

Here, defendant continuously acted in a disorderly, disruptive, and disrespectful manner. At his competency hearing, defendant repeatedly used obscene language, interrupted the hearing, and insisted that he not be present. During voir dire, defendant asked a juror why he was looking at defendant, and when the court addressed defendant, defendant suggested "you just do the trial without me." Before testimony was heard, defendant demanded that he be allowed to sit in the bullpen, used various expletives, and stated, "[j]ust take me back, man, y'all have court without me." The trial judge warned defendant to conduct himself in a civilized manner or face being removed. During the deceased's mother's testimony, defendant continually interrupted her testimony, repeatedly insisting that she was lying. When the trial judge addressed defendant and

told him not to interrupt, defendant stated, "[y]ou already disc [sic] me. You can sit me in the bull pin [sic]. I'd rather be out there than be out here. . . I'm getting railroaded. You not giving me a fair trial." Defendant subsequently continued to disrupt the testimony, repeatedly stating that the deceased's mother was lying and demanding that the jury pay attention to the facts. The trial judge promptly excused the jury and then removed defendant from the courtroom. Defendant continued to disrupt proceedings loudly through the audio feed from his cell. Defense counsel later stated on the record that defendant had informed him that he did not want to participate in the trial. We find no abuse of discretion in the trial court's decisions to remove defendant from the courtroom and to conduct the remainder of defendant's trial without his presence.

Defendant next argues that the trial court erred when it denied his motion for a directed verdict on the grounds that there was insufficient evidence to support a first-degree premeditated murder conviction.[1] We disagree.

We review the denial of a directed verdict de novo, "consider[ing] the evidence presented by the prosecution to the time the motion is made and in a light most favorable to the prosecution, [to] determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Riley*, 468 Mich 135, 139-140; 659 NW2d 611 (2003). First-degree premeditated murder requires that the defendant killed the victim, and that the killing was willful, deliberate, and premeditated. *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). Premeditation and deliberation characterize a thought process undisturbed by hot blood and require sufficient time to permit the defendant to reconsider his actions; they may be established by evidence of the prior relationship of the parties, the defendant's actions before the killing, the circumstances of the killing itself including the weapon used and the location of the wounds inflicted, and the defendant's conduct after the homicide. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999). Circumstantial evidence and reasonable inferences from the evidence can be sufficient to prove the elements. *Id.* A defendant's intent "is a question of fact to be inferred from the circumstances by the trier of fact." *People v Kieronski*, 214 Mich App 222, 232; 542 NW2d 339 (1995).

The deceased's mother testified that her door was pushed open and she saw defendant, who she had known for 20 years, with one arm around the deceased's neck and his other arm holding a knife that he was digging into the deceased's upper torso. Defendant hit the deceased, causing him to fall to the floor, and continued to punch and kick the deceased as he lay on the floor. When the deceased's mother attempted to intervene, defendant attacked her and told her that "you better call the ambulance cause when the ambulance get here he'll be dead." Defendant then repeatedly stated that the deceased was dead, and he made no attempt to obtain help. A police officer transporting defendant to the police station testified that defendant said to

[1] Defendant's motion for directed verdict also challenged his felony-murder charge. Because defendant's felony murder conviction was set aside and dismissed at sentencing, it is moot whether the trial court erred in denying a directed verdict as to that charge. We therefore do not address it.

him, "yo' blood, why are you driving so crazy? It wasn't like I axed you up or anything." Another police officer testified that defendant told him that he stabbed the deceased in the shoulder, which caused the deceased to fall through the door. The deceased was pronounced dead when he arrived at the hospital. A rational trier of fact could have found beyond a reasonable doubt that defendant killed the decedent.

Defendant then took Juaniva Woodger, the deceased's sister, to a cemetery, where he hid from the police, raped her, and threatened to kill her if she said anything. Juaniva testified that defendant told her that he told people he was going to kill the deceased, he waited for two hours on the deceased's car for the deceased to get home, Juaniva was lucky that he did not have a gun because, if he did, he would have shot everyone in the house, and that he knew where he stabbed the deceased and there was no way the deceased was going to survive. A rational trier of fact could reasonably infer that defendant's actions were willful, deliberate, and premeditated. Therefore, viewing the evidence presented by the prosecutor, up to the time defendant made his motion for a directed verdict, in a light most favorable to the prosecution, a rational trier of fact could reasonably infer that defendant killed the victim and that his actions were willful, premeditated, and deliberate. The trial court properly denied defendant's motion for a directed verdict.

Defendant finally argues that there was insufficient evidence to support his kidnapping conviction. We disagree. We review sufficiency of the evidence claims de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

Defendant specifically argues that the prosecution did not establish any asportation that was not incidental to another underlying offense. Asportation is not mentioned in the kidnapping statute. MCL 750.349. Rather, it is a judicially required element of kidnapping through forcible confinement, although is not an element of kidnapping by secret confinement. *People v Jaffray*, 445 Mich 287, 298; 519 NW2d 108 (1994). Here, the felony information and the trial judge's instructions to the jury indicate that defendant was charged with secret confinement kidnapping. Thus, the prosecution did not need to establish asportation. *Id.*, 298. Defendant does not contest whether he willfully or maliciously confined or imprisoned Juaniva by force, without her consent, and without legal authority. See *Id.*, 305-309. Our review of the evidence in a light most favorable to the prosecution shows that a rational trier of fact could have found that the essential elements of secret confinement kidnapping proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Bill Schuette